

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

CHASE JARVIS, et al.,

Plaintiffs,

v.

K2 INC., a Delaware Corporation, and K-2  
CORPORATION, an Indiana Corporation  
d/b/a K2 Sports,

Defendants.

No. C03-1265Z

MINUTE ORDER

The following Minute Order is made by direction of the Court, the Honorable Thomas S. Zilly, United States District Judge:

(1) The Court has reviewed the papers filed in support of and in opposition to plaintiffs' motion for award of additional damages, docket no. 195, and has determined that additional briefing is needed. The parties are therefore directed to file supplemental briefs addressing the issues described below. Plaintiffs shall file an opening supplemental brief, not to exceed twenty-four (24) pages in length, by January 4, 2008. Defendants shall file a responsive supplemental brief, not to exceed twenty-four (24) pages in length, by January 18, 2008. Plaintiffs may file a supplemental reply, not to exceed twelve (12) pages in length, by January 25, 2008.

(2) Validity of May 2003 Registrations: On appeal in this matter, the United States Court of Appeals for the Ninth Circuit held that the four collage advertisements at issue, denominated as SP5, SP6, FT10, and FT11, constitute derivative works in which K2 was "undisputably the owner of a copyright." Jarvis v. K2 Inc., 486 F.3d 526, 532 & n.6 (9th Cir. 2007). In their motion for award of additional damages, plaintiffs assert that

1 copyrights in three of the six SP5 images (two of which are duplicated in SP6) and all seven  
2 of the FT10 images (one of which also appears in FT11) were registered in May 2003. The  
3 deposits attached to the two May 2003 registrations, however, appear to be K2's derivative  
4 (collage) images. See Trial Exh. 5 & 6 (reproduced in Exh. 4 & 5 to Neely Decl. (docket no.  
5 197)). The parties are directed to address (i) whether the May 2003 registrations are in fact  
6 based on K2's derivative images, and (ii) the validity of the May 2003 registrations in light  
7 of the Ninth Circuit's holding that K2 is the owner of copyrights in the various collage  
8 images.

9 (3) Negatives Related to F10 and F11 and Judicial Notice: The Court has  
10 identified within the record contact sheets made from negatives associated with some of the  
11 original photographs apparently used in FT10 and FT11. See Exh. 6A to Neely Decl. at pp.  
12 134 (frame 27), 136 (frames 5A & 6A), 137 (frames 14A & 15A), & 138 (frames 18 & 19)  
13 (docket no. 197). All of the negatives bear the label "Ilford HP5 Plus." The parties shall  
14 indicate whether they dispute that the negatives constitute evidence of the original  
15 appearance of the FT10 and FT11 images at issue, or that the negatives were from black-and-  
16 white film. The parties shall also address how these facts, whether disputed or not, affect the  
17 validity of the May 2003 registrations, and whether the Court may take judicial notice of the  
18 fact that Ilford HP5 Plus is a black-and-white film. See Fed. R. Evid. 201(c); see also Fact  
19 Sheet at [www.ilfordphoto.com/products/](http://www.ilfordphoto.com/products/).

20 (4) Proof of Registration: In their motion for award of additional damages,  
21 plaintiffs have not sufficiently identified the registration deposit associated with each image  
22 used in the four collage advertisements at issue. For many of the images, plaintiffs have  
23 provided nothing more than a citation to a compact disc containing extremely poor quality  
24 copies of over a thousand negatives and/or slides. Plaintiffs are directed to specify the exact  
25 negative or slide registered with the Copyright Office, if any, for each of the images for  
26 which they claim infringement, and to provide a legible printed copy thereof. Plaintiffs are  
encouraged to provide the requested information in tabular form, with negatives identified by  
compact disc folder and file name, as well as contact sheet page and frame numbers, and  
slides identified by compact disc folder and file name, as well as page, column, and row  
numbers. Defendants may include in their responsive supplemental brief any additional  
argument concerning proof of registration and the Court's jurisdiction over the infringement  
claims at issue.

(5) Modifications to Findings of Fact: The parties have raised an issue whether the  
Court erred in finding that the second written agreement between the parties, dated  
December 13, 2001, governed the images used in the four collage advertisements. Findings  
of Fact and Conclusions of Law at ¶ 60 (docket no. 164). The parties are directed to address  
whether the finding at issue was necessary to the Court's prior rulings or to the Ninth  
Circuit's decision in this matter, whether the finding is supported by the evidence presented  
at trial, and, if not, whether the finding may be modified to comport with the documents  
adduced at trial.

Filed and entered this 6th day of December, 2007.

By Claudia Hawney  
Deputy Clerk